In the High Court of Punjab and Haryana, Chandigarh.

C.W.P.No.16286 of 2006
Date of Decision: 23.8.2007

Punjab National Bank, Kurukshetra.

…
Petitioner.

Versus

Central Government Industrial Tribunal-cum-Labour Court, New Delhi and Another.

…
Respondents.

CORAM:HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE AJAI LAMBA

Present: Mr.Sanjiv Bansal, Advocate
for the petitioner.

Mr.R.K.Malik, Advocate
for respondent No.2.

JUDGMENT

ADARSH KUMAR GOEL, J.

This petition seeks quashing of award (Annexure P2) reinstating the workman with back wages.

The issue arising out of dismissal of the workman was referred for adjudication to Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, which was later on transferred to New Delhi, at the instance of the workman.

The case of the workman was that he was working as

Clerk-cum-Cashier in Punjab National Bank. He was Cashier-in-Charge at the relevant time. On 21.3.1984, he found that cash of Rs.35,000/- was missing and he informed the Assistant Manager in writing. A criminal case was registered and the departmental inquiry was initiated against him on two counts: consuming of liquor at 1.30 p.m. during duty hours and negligence in handling cash. He was found guilty of the charges and punishment of dismissal from service was imposed.

Case of the workman was that findings of Inquiry Officer were perverse as evidence led in his defence was not properly appreciated. It was further submitted that Ashok Kumar, Peon of the petitioner-Bank was found to have stolen the amount, which he had confessed.

The Labour Court held that the finding of the Inquiry Officer was perverse. The theft was committed by Ashok Kumar and, therefore, the workman could not be held guilty of negligence. The testimony of Hakikat Roy, which was the main basis of the finding of the Inquiry Officer, was not reliable and the charge of consuming liquor was not proved.

Learned counsel for the petitioner submits that unless the inquiry was held to be unfair, the Labour Court did not have jurisdiction to go into the question of reliability of witnesses and that the finding of misconduct could not be held to be perverse by holding that the evidence of the witnesses was not reliable.

Learned counsel for the workman, however, submits

that even if the charge of consuming liquor is held to have been proved, the charge of negligence having been set aside, the matter should have been remanded back on the question of punishment.

The questions for consideration are:-

i) Whether the Labour Court could have gone into the reliability of witnesses and interfered with the finding of guilt without holding the inquiry to be vitiated?

ii) Whether the Labour Court was bound to remand the matter if one of the charges was held not be proved?

iii) Whether this Court ought to interfere with the award of the Labour Court?

Re. Question No. i):-

The law on the point is settled. Prior to introduction of Section 11-A in the Industrial Disputes Act, 1947 (for short, "the Act"), the Industrial Tribunal could interfere with punishment for misconduct on the ground of want of good faith, victimization, unfair labour practice, violation of principle of natural justice, the material being baseless or perverse. If a proper inquiry had been held, the Tribunal could not interfere. After introduction of Section 11-A, the Tribunal has the power to reappraise the evidence led in the domestic inquiry and be satisfied that the

finding of misconduct was correct. Where no inquiry has been held, employer could be allowed to adduce evidence before the Tribunal. This position has been clearly laid down in ***The Workmen of M/s Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management and others*** AIR 1973 SC 1227 as follows:-

> "32. We will first consider cases where an employer has held a proper and valid domestic enquiry before passing the order of punishment. Previously the Tribunal had no power to interfere with its finding of misconduct recorded in the domestic enquiry unless one or other infirmities pointed out by this Court in Indian Iron and Steel Co. Ltd. 1958 SCR 667 = AIR 1958 SC 130 existed. The conduct of disciplinary proceeding and the punishment to be imposed were all considered to be a managerial function which the Tribunal had no power to interfere unless the finding was perverse or the punishment was so harsh as to lead to an inference of victimisation or unfair labour practice. This position, in our view, has now been changed by Section 11A. The words "in the course of the adjudication proceeding, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the

> finding of misconduct is correct. The limitations imposed on the powers of the Tribunal by the decision in Indian Iron and Steel Co. Ltd. 1958 SCR 667 = AIR 1958 SC 130, case can no longer be invoked by an employer. The Tribunal is now at liberty to consider not only whether the finding of misconduct recorded by an employer is correct; but also to differ from the said finding if a proper case is made out. What was once largely in the realm of the satisfaction of the employer, has ceased to be so; and now it is the satisfaction of the Tribunal that finally decides the matter."

However, in later decisions, it has been clarified that jurisdiction of the Labour Court is not unfettered under Section 11-A and has to be based on justifiable grounds. It has also been held that once misconduct is proved, the Tribunal has to sustain the order of punishment unless the same was harsh indicating victimisation.

In ***Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy and others*** AIR 2005 SC 2769, it was held:-

> "23. With reference to Section 11-A of the Act, in the case of The Workmen of Firestone Tyre and Rubber Company Ltd. (supra) this Court held :-
>
> > "...Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation....."
> >
> > "....If a proper enquiry is conducted by an employer and a correct finding arrived at

> regarding the misconduct, the Tribunal, even though it has now power to differ from the conclusions arrived at by the management, will have to give every cogent reasons for not accepting the view of the employer...."

24. In CMC Hospital Employees' Union and Anr. (supra) this Court held :-

> "....Section 11-A.....cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision....."

In the present case, the Labour Court held as under:-

> “6. During enquiry as many as 7 witnesses namely, Shri S.D. Gupta MW-1, Shri M.C. Paul, MW-2, Shri Hakikat Roy MW-3, Shri Om Parkash MW-4, Shri R.L. Jindal MW-5, Shri Jagmohan MW-6 and Shri Ashwani Kumar Bhardwaj MW-7 were examined on behalf of management respondent and the testimony of Hakikat Roy, Om Parkash and Jagmohan is relevant. Shri Hakikat Roy claims to have seen Mohan Lal Singla on 21.03.84 at 3 P.M.

to have consumed liquor while Jagmohan and Om Parkash have not seen him consuming liquor but Jagmohan stated that Shri Singla took out the bottle from the drawer and gave it to him to keep it to Daftri Room and Om Parkash stated that he saw Mr. Singla giving bottle of Whisky to Jagmohan. Shri Hakikat Roy has seen the workman taking/consuming whisky at 3 P.M. Enquiries from these witnesses were also made by Police Station during interrogation of the criminal cases. It has come in evidence that enquiries from these witnesses were made during interrogation of the criminal case by the Police Officer and they were also given beatings. It is possible that these witnesses have deposed against the workman in the enquiry out of fear and with a view to save their skin. Their testimony does not appear to be free from doubt. Therefore, the charge of consuming liquor by the claimant is not proved. Therefore, similarly, the subsequent event that Shri Ashok Kumar, Peon, made the confessional statement on 11.01.94 during investigation of the case that he had stolen the amount of Rs.35,000/- from the cabin of the Cashier during the year 1984 by opening a lock thereof with the help of duplicate key and that he (Ashok Kumar) was prosecuted for the offence of theft in the Court of Smt. Neelima Shangla, C.J.M. as mentioned above is contrary to the finding of the enquiry report that the shortage of the said amount of Rs.35,000/- was an act of gross negligence which was prejudicial to the interest of the Bank and this not only creates doubt about the findings of the enquiry committee on this charge (second charge) but upsets the same.

> The amount has been stolen by Ashok Kumar, Peon of the Bank in the absence of the claimant workman from his cabin by opening lock of his cabin with the help of Duplicate Key in the absence of the workman, when he had gone to take lunch during lunch hours. Thus, this act of theft cannot be described negligence on the part of the workman, particularly when he has locked the cabin with lock and keys provided by the Respondent-Bank."

The above discussion by the Labour Court shows that statement of Jagmohan that he had seen the workman consuming liquor has been discarded on the ground that he was examined by the police for interrogation in a criminal case and there was a possibility of a witness having deposed against the workman out of fear. No basis for such conjecture has been indicated. A reference to inquiry report, Annexure P-1, shows that the witness Hakikat Roy had fully supported the charge of the workman consuming liquor and there was no reason to presume that the said witness was under the influence of police or was deposing out of fear. Such a serious charge against a bank employee handling cash could not have been ignored merely on the basis of a conjecture. The Labour Court could not have thus held that the charge was not proved.

Re. Question No.ii):-

The charge of consuming liquor while on duty by Cashier of a Bank itself being enough to sustain the punishment

of dismissal, even though the charge of negligence and handling cash is ignored, there was no reason for the Labour Court to have remanded the matter.

Re. Question No.iii):-

In view of law laid down by the Hon'ble Supreme Court, it is clear that the Labour Court could not have, even in exercise of jurisdiction under Section 11-A of the Act, interfered with the finding of misconduct, having regard to the nature of evidence available. The award of the Labour Court being perverse and without jurisdiction, this Court will, in these circumstances, be justified in interfering with the award of the Labour Court.

Accordingly, we allow this petition and quash the impugned award.

(ADARSH KUMAR GOEL)
JUDGE

August 23, 2007 **(AJAI LAMBA)**
DK/ashwani **JUDGE**